Billing Code 3510-BX-P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 150324296-5964-03]

RIN: 0605-AA38

Public Information, Freedom of Information Act and Privacy Act Regulations

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Commerce's (Department) Privacy Act regulations under the Privacy Act. The revisions add a new Privacy Act System of Records, entitled "COMMERCE/DEPT-25, Access Control and Identity Management System," to the General and Specific exemptions sections of the Department's Privacy Act regulations. The Privacy Act requires agencies to identify records exempted from a provision of the General and/or Specific exemptions sections of the Act. This document helps the Department comply with this requirement.

DATES: These amendments are effective [insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Michael J. Toland, Department Freedom of Information and Privacy Act Officer, Office of Privacy and Open Government, 1401 Constitution Ave, NW, Room 52010, Washington, DC 20230.

1

SUPPLEMENTARY INFORMATION:

Background Information

On May 8, 2015, the Department of Commerce published a proposed rule revising its existing regulations at 15 CFR part 4 under the FOIA and Privacy Act, 5 U.S.C. 552a. See 80 FR 26499. This rule proposed revisions to the Department's regulations under the Privacy Act. In particular, the action would amend the Department's Privacy Act regulations regarding applicable exemptions to reflect new Department wide systems of records notices published since the last time the regulations were updated. The revisions of the Privacy Act regulations in subpart B of part 4 incorporate changes to the language of the regulations in the following provisions: § 4.33 (General exemptions); and § 4.34 (Specific exemptions).

Interested persons were afforded the opportunity to participate in the rulemaking process through submission of written comments to the proposed rule during the 30-day open comment period. On June 29, 2015, the Department reopened the comment period for an additional 30 days because not all interested parties may have been given appropriate notification about this proposed new system of records, as well as time to respond with comments prior to the closing date of the original public comment period of June 8, 2015. See 80 FR 36397.

Public Comments

The Department received one public submission in response to the proposed rulemaking, which was similar or identical in some cases to the ones submitted by the commenter for the new Privacy Act System of Records: "COMMERCE/DEPT-25, Access Control and Identity Management System." In particular, the commenter suggested that the "proposed changes [to this rule] are expressly intended to exempt the Department's proposed new system of records entitled 'COMMERCE/DEPARTMENT-25, Access Control and Identity Management System,'

set forth in 80 FR 26534, published May 8, 2015, from most provisions of the Privacy Act." The commenter also indicated that the Department provided insufficient business justification for this system of records. The commenter further submitted the view that the routine uses listed in this notice may result in matching programs as described in 5 U.S.C. 552a(a)(8), adding that if the Department engages in any matching program, it must follow matching program requirements outlined in 5 U.S.C. 552a(o).

The Department would like to thank the commenter for submitting comments in response to the proposed rulemaking. While due consideration has been given to the comments received, since they were similar or identical to those received for the proposed Privacy Act System of Records notice entitled: "COMMERCE/DEPT-25, Access Control and Identity Management System," and the comments did not address any substantive changes to this proposed rule, the Department will not address the comments in this notice. Instead, responses to the commenter's comments can be found under the Public Comments and Responses section of the final notice for COMMERCE/DEPT-25.

With this action, the Department's Privacy Act regulations are revised regarding applicable exemptions to reflect new Department wide systems of records notices published since the last time the regulations were updated. Specifially, the revisions of the Privacy Act regulations in subpart B of part 4 incorporate changes to the language of the regulations in the following provisions: § 4.33 (General exemptions); and § 4.34 (Specific exemptions).

Classification

It has been determined that this notice is not significant for purposes of E.O. 12866.

Regulatory Flexibility Act: The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this

rule will not have a significant economic impact on a substantial number of small entities. This final rule amends the Department's Privacy Act regulations regarding applicable exemptions to reflect new Department wide systems of records notices published since the last time the regulations were updated. These amendments are administrative in nature and will not impose a financial impact on anyone, does not change the way any acts or the way anyone is treated. Further, the applicable exemptions apply to information collected to establish identity, accountability, and audit control of electronic or other digital certificates of assigned personnel who require access to Department of Commerce electronic and physical assets. The information collected is provided on a voluntary basis, with no cost incurred by individuals. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Paperwork Reduction Act: This document does not contain a collection-ofinformation requirement subject to the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

List of Subjects in 15 CFR Part 4

Freedom of information, Privacy

October 29, 2015_ _____

Date Catrina D. Purvis

Department of Commerce

Chief Privacy Officer and Director for

Open Government

For reasons stated in the preamble, the Department of Commerce amends 15 CFR part 4 as follows:

PART 4—DISCLOSURE OF GOVERNMENT INFORMATION

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 553; 31 U.S.C. 3717; 41 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

■ 2. Amend § 4.33 by adding paragraph (b)(4) to read as follows:

§ 4.33 General exemptions.

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- (b) * * *
- (4) Access Control and Identity Management System—COMMERCE/DEPT–25.

 Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement process, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceedings, to avoid disclosure of investigative techniques, and to avoid endangering law enforcement personnel.
- 3. Amend § 4.34 by revising paragraphs (a)(1), (b) introductory text, (b)(1), (b)(2)(i) introductory text, (b)(2)(i)(C), (b)(2)(i)(F), and (b)(4)(i) to read as follows:

§ 4.34 Specific exemptions.

(a)(1) Certain systems of records under the Act that are maintained by the Department may occasionally contain material subject to 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the **Federal Register** by the Department that are within this exemption are: COMMERCE/BIS-1, COMMERCE/ITA-2, COMMERCE/ITA-3, COMMERCE/NOAA-11, COMMERCE-PAT-TM-4, COMMERCE/DEPT-12, COMMERCE/DEPT-13, COMMERCE/DEPT-14, and COMMERCE/DEPT-25.

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- (b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:
- (1) Exempt under 5 U.S.C. 552a(k)(1). The systems of records exempt hereunder appear in paragraph (a) of this section. The claims for exemption of COMMERCE/DEPT–12, COMMERCE/BIS–1, COMMERCE/NOAA–5, and COMMERCE/DEPT–25 under this paragraph are subject to the condition that the general exemption claimed in § 4.33(b) is held to be invalid.
- (2)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

* * * * *

(C) Fisheries Law Enforcement Case Files—COMMERCE/NOAA–5, but only on condition that the general exemption claimed in § 4.33(b)(2) is held to be invalid;

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- (F) Access Control and Identity Management System—COMMERCE/DEPT-25, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid; * * * * *
- (4)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:
 - (A) Applications to U.S. Merchant Marine Academy (USMMA)—COMMERCE/MA-1;
 - (B) USMMA Midshipman Medical Files—COMMERCE/MA-17;
 - (C) USMMA Midshipman Personnel Files—COMMERCE/MA-18;
 - (D) USMMA Non-Appropriated Fund Employees—COMMERCE/MA-19;
 - (E) Applicants for the NOAA Corps—COMMERCE/NOAA-1;
 - (F) Commissioned Officer Official Personnel Folders—COMMERCE/NOAA-3;
 - (G) Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT-3;
- (H) Investigative and Inspection Records—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid;
- (I) Investigative Records—Persons within the Investigative Jurisdiction of the Department COMMERCE/DEPT-13;
- (J) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT–14; and
- (K) Access Control and Identity Management System—COMMERCE/DEPT-25, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid.

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